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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION
2015 MAY -1 PM 2:58

TPG GLOBAL, LLC, a limited
liability company, et al.

Plaintiff,

v.

ADAM LEVINE, an individual,

Defendant.

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NO. 4:15-CV-00059-A

CLERK OF COURT
WC

**DEFENDANT'S MOTION
TO DISMISS SECOND AMENDED COMPLAINT**

Pursuant to Rules 8, 12(b)(6) and 12(b)(1), Defendant Adam Levine moves the Court to dismiss Plaintiff's Second Amended Complaint because it fails to state a claim under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (CFAA) and because, absent a viable claim under that statute, there is no basis for subject matter jurisdiction over the remaining claims.

As shown in the accompanying brief, the CFAA is "primarily a criminal statute designed to combat hacking." *WEC Carolina Energy Solutions LLC v. Miller*, 687 F.2d 199, 201 (4th Cir. 2012). While any violation of the Act constitutes a criminal offense, Congress provided a civil cause of action for a limited subset of those offenses. 18 U.S.C. § 1030(g). Plaintiff has attempted in its Second Amended Complaint to invoke the Court's jurisdiction under 28 U.S.C. section 1331 by recasting its state-law employment claims as four or five violations of the CFAA.

Paragraphs 87, 88, and 89 of the Second Amended Complaint recite the elements of claims under sections 1030(a)(2)(C), 1030(a)(4), and 1030(a)(5)(C) of the CFAA, respectively. But Plaintiff's allegations are inadequate to state claims under these provisions

because Plaintiff does not allege that Levine's access to TPG's computer system exceeded his authorization as that phrase is defined in the CFAA. *See* section I of accompanying brief.

Paragraph 90 of the Second Amended Complaint alleges for the first time that on some unidentified occasion Levine submitted unidentified "unauthorized expense reports," and it recites the elements of a claim under section 1030(a)(5)(A) of the CFAA. But Plaintiff's allegations are inadequate to state a claim under this provision because Plaintiff pleads no facts to show that Levine committed a "transmission" violation or intentionally caused "damage" as these terms are defined in the CFAA. *See* section II of accompanying brief.

Paragraph 92 of the Second Amended Complaint alleges that Levine knowingly caused damage to TPG's computer systems by deleting data from his laptop and Blackberry. It appears that Plaintiff has pleaded this allegation not to allege a separate violation of the CFAA, but merely to identify an element of damages being sought in connection with the other claimed offenses. If paragraph 92 is intended to assert a separate claim, however, Levine moves to dismiss it because it does not allege the required elements of any CFAA offense and because Plaintiff has not pleaded facts to show that the alleged destruction of data on remote devices constitutes "damage" as Congress defined that term in the CFAA. *See* section III of accompanying brief.

Independently, Levine moves to dismiss all of Plaintiff's CFAA claims for the additional reason that Plaintiff does not plausibly allege that it suffered the nature and threshold amount of "loss" that is required to pursue a civil action under the CFAA. *See* section IV of accompanying brief.

Plaintiff's attempt to plead claims under the CFAA is its only basis for invoking this Court's subject matter jurisdiction under 28 U.S.C. section 1331. If the Court dismisses the CFAA causes of action for failure to state a claim, Levine moves the Court to dismiss the

remaining state-law causes of action for lack of subject matter jurisdiction. This case is, and always has been, a routine employment dispute under state law.

PRAYER

Defendant Levine therefore prays that the Court dismiss this case and award him such further relief to which he may be entitled.

Respectfully submitted,

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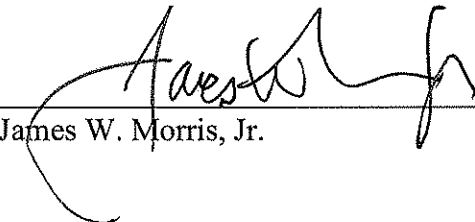
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by email and U.S. Mail on the following counsel of record on this 1st day of May, 2015:

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